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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1969

NUMBER 1554

JOHNNY B. DAPPER

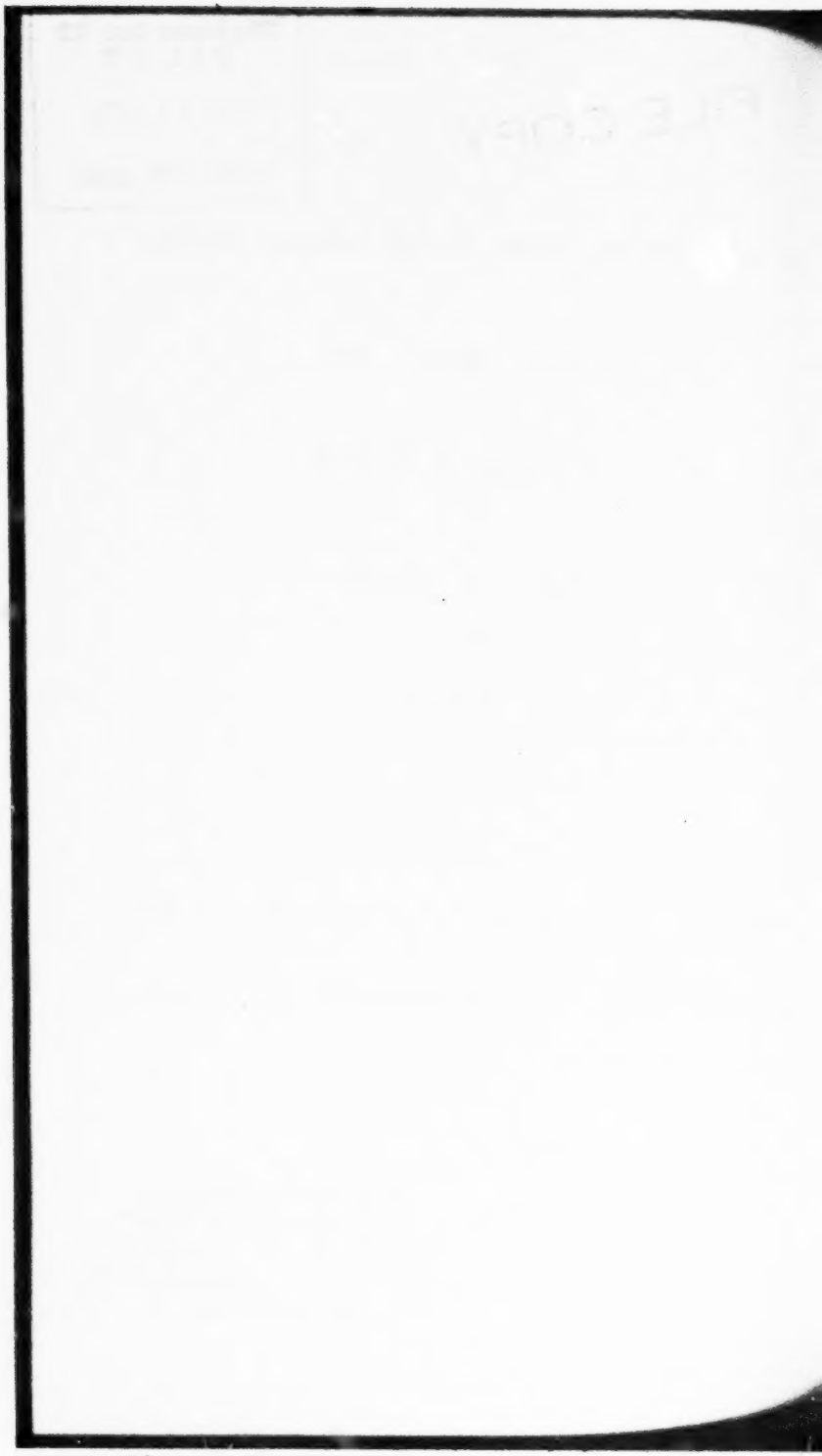
vs.

CALIFORNIA

PETITION FOR A WRIT OF CERTIORARI TO THE

SUPREME COURT OF THE STATE OF CALIFORNIA

Johnny B. Dapper
In propria persona
335 N 34 Street
San Diego, California
Zip Code 92102



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OCTOBER TERM 1969

JOHNNY B. DAPPER
vs.
CALIFORNIA

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

Johnny B. Dapper, in propria persona, the petitioner herein, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of California. Which Court on December 10, 1969 denied a Hearing on his petition to review the Opinion of a California Appellate Court. (Dapper vs. Municipal Court 276 A.C.A. 982 81 Cal Rptr 340 )

GROUNDS FOR JURISDICTION

The California Supreme Court by denying a Hearing, has upheld Opinion of a California Appellate Court that sanctions double jeopardy. Which is forbidden by the V and XIV Amendments to the United States Constitution. And also this opinion is false in stating; petitioner was convicted of maintaining a criminal nuisance. The truth is; petitioner was never convicted of maintaining a criminal nuisance.

HEARING DENIED - EXTENTION GRANTED

A petition for a Hearing was denied on December 10, 1969. An Order granting extention of time to petition for a Writ of Certiorari, to and including April 30, 1970 was made by Mr. Justice William O. Douglas on March 23, 1970.

STATUTORY PROVISION

Petitioner deems his rights to protection from being twice placed in jeopardy for the same crime, and to the due process of law, guaranteed by the V and XIV Amendments to the United States Constitution. To have been violated by the California Courts Thereby confering jurisdiction on this Court.

## QUESTIONS PRESENTED FOR REVIEW

1. Does the Constitution exclude any type of crime from the protection against a second prosecution for the same crime, under the twice in jeopardy clause of the V Amendment.

2. Can the State subject one to repeated prosecutions for the same continuing crime, not a repetition, but the same, original crime. Without violating the V and XIV Amendments to United States Constitution.

3. Are California Penal Code Section 373a and Section 11.12 San Diego Municipal Code in accord with the twice in jeopardy clause of the V Amendment.

## LAW THE CASE INVOLVES

United States Constitution Amendment V . . nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; . . nor be deprived of life, liberty, or property, without due process of law; . . .

United States Constitution Amendment XIV . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

California Penal Code Section 373a, and Section 11.12 San Diego Municipal Code. Please see page 7

## STATEMENT OF THE CASE

This cause concerns a Superior Court order, No. 307754 denying a Writ of Prohibition to restrain the Municipal Court of San Diego Judicial District, from proceeding with a second trial, M 63320, based on the same facts, that were before this Court in the cause No. 875 October Term 1969, (Certiorari denied on February 24, 1970, Petition for Rehearing mailed April 24, 1970.) The V Amendment forbids one to be twice put in jeopardy. Also California Penal Code section 687 contrary, to section 373a, (above paraghaph)" No person can be subjected to a second prosecution for a public offense for which he has been prosecuted and convicted or acquitted" The Code does not exclude any kind or kinds of crime, nor does the V Amendment, to be covered by the twice in jeopardy clause.

The California Appellate has held; The foregoing



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has no application to petitioner's"crime" a continuing crime, although he has cited cases and law applicable to continuing crimes. And the Constitutions do not exclude continuing crimes from being covered by the twice in jeopardy clause.

In his brief filed in Appellate Court petitioner quoted; Mr. Justice Blatchford, in delivering the opinion of the Court; In Re Snow 120 U.S.274 (1886) at page 285; "There can be but one offence between such earliest day and the end of the continuous time embraced by all of the indictments." At page 282, "There was but a single offence committed prior to the time the indictments were found. This appears on the face of the judgment. It refers to the indictments as found "for the crime of unlawful cohabitation committed, during the time stated, "divided into three periods, according to each indictment. For so much of the offence as covered each of these . . periods the defendant is, according to the judgment, to be imprisoned for six months and to pay a fine of $300. The division of the two years and eleven - months is wholly arbitrary. On the same principle there might have been an indictment covering each of the thirty-five months, with imprisonment for seventeen years and a half and fines amounting to $10,000 or even an indictment covering every week, with imprisonment for seventy-four years and fines amounting to $44,400; and so on, ad infinitum, for smaller periods of time. It is to prevent such an application of penal laws, that the rule has obtained that a continuing offence of the character of the one in this case can be committed but once, for the purposes of indictment or prosecution . . ."

State v. Toombs 326 Missouri 982, The Court ; "The same offence" means the same criminal act. If there was but one act, one intent and one violation and the defendant has been tried and convicted on a charge based on such act, intent and violation, no subsequent charge can be based thereon or any part of it."

Commonwealth v. Robinson 126 Mass 261 The Court; "The offence charged in this complaint is that of keeping a tenement for the illegal sale of intoxicating liquors between the first day of January and the twentieth day of August. If the defendant thus kept the tenement during every hour of the time between those dates, he has committed but one offence. It is true that such offence is continuous in its character, It is not an offence committed by a single sale of liquors, but is that of maintaining a resort for the purchase of intoxicating liquors .".

QUESTION OF SECOND COMPLAINT- DUE PROCESS RAISED

Attempt was made in Municipal Court, On July 1 1968 and on July 25, 1968, and again August 9, 1968

Question raised in Petition to Superior Court August 14, 1968 and at Hearing on August 27, 1968

Question raised in Briefs to California Appellate Court, January 13, 1969 and April 22, 1969 and at Hearing October 14, 1969.

Question raised in Petition to California Supreme Court November 26, 1969.

REASONS FOR GRANTING THE WRIT

Petitioner believes he has shown that; The Opinion of the California Appellate Court is in error by affirming Order denying a Writ of Prohibition and in holding that multiple prosecutions for the same original crime does not violate the V and XIV Amendments to the United States Constitution

Petitioner believes this Court will agree that the State Court has departed from the accepted and usual course of judicial proceedings. And in effect has sanctioned such a departure by a lower Court, as to call for an exercise of this Court's power of supervision.

CONCLUSION

Petitioner wishes to direct attention of this Court to the constant effort in the Appellate Court Opinion to degrade and vilify petitioner by repeatedly refering to property on his land as trash rubbish and debris, "that he argues the same trash was on his property when the first complaint was filed as was there when second complaint was filed? Petitioner here states that all material on his land consists of usable repairable items.

Respectfully Submitted

I Johnny B.Dapper the petitioner have made and read this petition. The foregoing is true of my own knowledge except as to those matters stated herein on my information and belief, and as to those matters I believe it to be true. I declare under penalty of perjury that the foregoing is true and correct.

April 29, 1970
San Diego, California

Johnny B. Dapper



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# APPENDIX

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[Civ. No. 9547. Fourth Dist., Div. One. Oct. 17, 1969.]

**JOHNNY B. DAPPER, Plaintiff and Appellant, v. THE MUNICIPAL COURT OF THE SAN DIEGO JUDICIAL DISTRICT OF SAN DIEGO COUNTY, Defendant and Respondent; THE PEOPLE, Real Party in Interest and Respondent.**

**[1] Nuisances — Remedies — Criminal Prosecution.** — Maintaining a criminal nuisance of a continuing nature on one's property may subject the offender to multiple prosecution and conviction under the criminal statutes when he refuses to abate the nuisance.

**[2a, 2b] Id.—Remedies—Criminal Prosecution.**—A conviction for maintaining a nuisance does not license the offender to continue that nuisance free from further criminal sanctions; and thus a city did not exhaust its criminal remedy once it obtained a conviction for maintaining a particular nuisance.

**[3] Id.—Remedies—Criminal Prosecution.**—A statute (or ordinance) regarding multiple offenses for maintaining a continuing nuisance, which makes it the duty of the local district attorney or city attorney to prosecute persons who maintain nuisances after reasonable notice to abate, by continuous prosecutions, until the nuisance is abated and removed, are valid exercises of the police power, the aim of which is to compel nuisance abatement by criminal sanctions; it reasonable for the Legislature to designate a refusal to act when one should act as an offense and a continued refusal to act as successive offenses.

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[3] See **Cal.Jur.2d**, Nuisances, § 80 et seq; **Am.Jur.**, Nuisances (1st ed § 178 et seq).

**McK. Dig. References:** [1-3] Nuisances, § 65; [4] Criminal Law, § 142(4).

[4] **Criminal Law—Former Jeopardy—Identity of Offenses—Continuous Course of Conduct.**—The rule that there may be but one prosecution for a continuing crime has application where a continuous crime is charged as separate offenses, all committed during the period embraced by the indictment, whereby but one offense occurs down to the date the indictment is found; the rule has no application where a second charge is made after conviction for a first offense.

APPEAL from an order of the Superior Court of San Diego County denying a writ of prohibition to restrain a municipal court from further proceedings in a criminal action. Richard B. Ault, Judge. Affirmed.

Johnny B. Dapper, in pro. per., for Plaintiff and Appellant.

John W. Witt, City Attorney, and J. David Franklin, Deputy City Attorney, for Defendant and Respondent and for Real Party in Interest and Respondent.

BROWN (Gerald), P. J.—Johnny B. Dapper appeals an order of the San Diego Superior Court denying his application for a writ of prohibition to restrain the Municipal Court, San Diego Judicial District, from further proceedings in a criminal action brought against him by the San Diego City Attorney on behalf of the People.

In October 1967, Dapper was convicted on five counts of violating provisions of the San Diego Municipal Code. All five violations involved maintaining his real property in an unkempt manner by allowing debris, rubbish and weeds to accumulate. After the date of the charged violations but before trial, four of the municipal code sections involved were repealed. Dapper petitioned the California Supreme Court for a writ of habeas corpus. On May 28, 1969, the Supreme Court ordered his convictions on three of the counts vacated because the ordinances were repealed and allowed a fourth conviction to stand because the ordinance had been substantially reenacted. The fifth conviction based on the unrepealed ordinance was also allowed to stand (*In re Dapper*, *71 Cal.2d —— [77 Cal.Rptr. 897, 454 P.2d 905]).

On July 1, 1968, the city attorney filed a second criminal

[4] See **Cal.Jur.2d**, Criminal Law, § 172 et seq; **Am.Jur.2d**, Criminal Law, § 182 et seq.

*Advance Report Citation: 71 A.C. 197.



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complaint charging Dapper with one violation of the municipal code, two violations of the Uniform Fire Code and one violation of section 17906, title 8 of the California Administrative Code. The violations charged again were based upon Dapper allowing debris, trash, weeds and rubbish to accumulate and remain on his property.

Dapper contends the second complaint puts him again in jeopardy for the crimes of which he was convicted in 1967. He argues the same trash was on his property when the first complaint was filed as was there when the second complaint was filed. In short, Dapper has yet to clean up his yard.

The real party in interest, represented by the San Diego City Attorney, argues Dapper has waived his double jeopardy objection because he did not raise that plea in the municipal court until after his prohibition petiton had been denied in the superior court by the order appealed here. We prefer, however, to deal with the constitutional objection on its merits.

We will assume the crimes charged in 1968 are the same as those for which Dapper was convicted in 1967 (neither side argues otherwise although the ordinance sections do not correspond and the administrative regulation charged in 1968 was not charged in 1967).

**[1]** The question is whether maintaining a criminal nuisance of a continuing nature on one's property may subject the offender to multiple prosecution and conviction under the criminal statutes when he refuses to abate the nuisance?

**[2a]** Has the city exhausted its criminal remedy once it obtains conviction for maintaining a particular nuisance?

San Diego Municipal Code section 11.12 provides in part: "Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Code is committed, continued, or permitted by such person and shall be punishable accordingly. In addition to the penalties hereinabove provided, any condition caused or permitted to exist in violation of any of the provisions of this Code shall be deemed a public nuisance and may be, by this City, summarily abated as such, and each day that such condition continues shall be regarded as a new and separate offense."

**[3]** Substantially the same provisions regarding multiple offenses for maintaining a continuing nuisance are contained in Penal Code section 373a which makes it the duty of the local district attorney or city attorney to prosecute persons

who maintain nuisances after reasonable notice is abate by *continuous prosecutions* until the nuisance is abated and removed.

Dapper's offense here is one founded upon his inaction rather than upon separate and distinct acts. It is reasonable for the Legislature to designate a refusal to act when one should act as an offense and a continued refusal to act as successive offenses. The legislative aim is to compel nuisance abatement by enforcing criminal sanctions, an exercise of the police power we find valid. (See *State* v. *Murray*, 237 Mo. 158 [140 S.W. 899].)

**[4]** Dapper's contention there may be but one prosecution for a continuing crime (21 Am.Jur.2d, Criminal Law, § 183, p. 240) has application where a continuous crime, such as polygamy, is charged as separate offenses, all committed during the period embraced by the indictment. It is there held but one offense occurs down to the date the indictment is found. (*Ex parte Nielsen*, 131 U.S. 176 [33 L.Ed 118, 9 S.Ct. 672, 675].) The rule has no application where the second charge is made after conviction for the first offense. **[5b]** A conviction for maintaining a nuisance does not license the Offender to continue that nuisance free from further criminal sanctions.

Order affirmed.

Coughlin, J., and Whelan, J., concurred.

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PETITION FOR A REHEARING OF

DAPPER vs. THE MUNICIPAL COURT

OF THE SAN DIEGO JUDICIAL DISTRICT

OF SAN DIEGO COUNTY IN CALIFORNIA

Johnny B. Dapper
In propria persona
335 N 34 Street
San Diego, California
Zip Code 92102

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PETITION FOR A REHEARING OF

DAPPER vs. THE MUNICIPAL COURT

OF THE SAN DIEGO JUDICIAL DISTRICT

OF SAN DIEGO COUNTY IN CALIFORNIA

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

Johnny B. Dapper, in propria persona, the petitioner herein prays for this Court to set aside this Court's Order of June 22,1970, denying him the Writ of Certiorari.

On September 5, 1968 he filed notice of Appeal from the Order of Superior Court of California, for San Diego County, denying him a Writ of Prohibition to restrain the Municipal Court, San Diego Judicial District.From further proceedings in a second criminal complaint, for the same original crime, as the first complaint, M 43578, ( 875 October Term 1969).

Appeal was taken to the Court of Appeal of the State of California, Fourth District Division One Which Court on October 17,1969,Affirmed said Order.

On May 11, 1970 petitioner filed in this Court a petition seeking a Writ of Certiorari to review the Opinion of the California Court of Appeal. On June 22, 1970 this Court denied such Petition. And this Petition seeks a Rehearing, and or relief from this Court's Order denying such Petition.

GROUNDS NOT PREVIOUSLY PRESENTED

On September 25, 1969 petitioner was seized in complete surprise,by the devise of an illegally issued bench warrant, and held in custody for almost five months. Just prior to this, on September 17,69

he made application for an extension of time to file Petition for Writ of Certiorari.Extension to November 22, 1969 was granted by Mr. Justice Marshall. Notice of this Order was not received by petitioner until October 26,1969, because of being in custody. He did however manage to prepare Petition while in custody and have it docketed November 22, 1969, as number 875 October Term 1969.Which Petition is directly related to this instant Petition. And petitioner's seizure and custody is also directly related,( please see petition for Writ of Habeas Corpus filed on December 10, 1969 in U. S. District Court Southern District of California ), a copy of this petition is on file with case No. 875 October Term 1969. All during time preceding being taken into custody, petitioner was kept busy with local Court action, so was unable to have studied procedure in this Court. While in custody he requested visits to law Library but was denied by Presiding Judge of Superior Court, although the Officers at the Honor Camp were very willing to bring him to the law Library. So his first Petition was prepared with only a Rule book this Court's Clerk had sent him just two weeks before Petition was due.

A Petition for a Rehearing (No.875) Which has not yet been filed, ( arrived one day out of time ) and the original Petition in this instant case No. 1554, were both prepared shortly after petitioner was released from custody, before he had time to study at law Library. And now he is preparing this Petition, with very little improvement of circumstances, because of the state of affairs and problems, and turmoil, because of having been seized without warning and held in custody nearly five months. Now surely this Court can see that petitioner has been prevented from studying the way he had before filing any action in the Courts below, because of the abuse of Judicial power by the Municipal Court. His Petitions to this Court have been prepared in an extemporaneous manner, to be timely.

Since filing the original Petition in this case petitioner has learned that, his correct move would have been to take Appeal to this Court rather than to seek a Writ of Certiorari.

From the foregoing, surely this Court will see some of the problems confronting a poor man seeking Justice in this Court. Could he afford an Attorney of his choice these problems would not have effected the quality of Petitions. So if any credence is placed in the part of the oath " and to do equal right to the poor and to the rich," petitioner prays the Court will take these circumstances in to consideration.



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## SAME JUDGE ISSUED ORDER APPEALED FROM

## - MEMBER OF APPELLATE COURT -

The California Appellate Court which held the Opinion, petitioner seeks this Court to review had as a Pro tempore Justice of the Court, during period petitioner's case was in said Court's jurisdiction, the same Judge who as Judge of Superior Court made the Order denying the Writ of Prohibition to petitioner. Which Order said Appellate Court has affirmed. This Judge is now an Associate Justice of said Appellate Court.

Petitioner has the greatest respect for this former Judge of the Superior Court, because in fact he is one of petitioner's favorite Judges, as he did treat petitioner with respect. And though he did deny the Writ of Prohibition, he did issue stay orders to prevent the lower Court in proceeding until the matter had been determined in the Appellate Court. Petitioner also believes said Judge now a Justice took no part in writing the Opinion.

However petitioner does believe, human nature being as it is, that the Appellate Court would try harder to affirm an Order of one of their own than they would try to favor petitioner. He feels that in the spirit of fairness the matter should have transfered to another Division of the Court. Then he believes the Opinion would not contain statements which have the color of slander and others which are simply untrue.

For example; . ."maintaining his real property in an unkempt manner by allowing debris, rubbish and weeds to accumulate." UNTRUE. " The violations charged again were based upon Dapper allowing debris, trash, weeds and rubbish to accumulate" UNTRUE "He argues the same trash was on his property when the first complaint was filed as was there when the second complaint was filed." UNTRUE.

Why does the Appellate Court endeavor to give the impression to anyone reading the Opinion that petitioner's property contains only trash, debris, weeds and rubbish. Please see complaint M 43578 as page 6 Clerk's transcript Superior Court, it is no ways near as vehement.

Much is made of "criminal nuisance", petitioner was never charged with or convicted of a criminal nuisance. This has been injected into the case by the Opinion of the Appellate Court.

Petitioner has never refused to act, as charged in the Opinion. In fact he agreed to have everything in proper order if allowed ample time. He was put into these circumstances when forced to move from former rented location by freeway construction.

## INTERVENING CIRCUMSTANCES

Since filing original Petition for Certiorari petitioner has noted in the Supreme Court Bulletin the following cases concerning double jeopardy, which have considerable bearing on his case.

Waller v. Florida No. 24 October Term 1969
Ashe v. Swenson No. 57 October Term 1969
Both decided on April 6, 1970

Both cases have elements that fit petitioner's case. In the Waller case, Florida had a statute like California Penal Code Section 373a allowing successive prosecutions. Petitioner had asked for a Constitutional Opinion on this from the Appellate. But the Court just quoted it as authority to permit a second trial. Both of the above cases cite many other cases and references, petitioner believes it needless to list them as this Court already has them and more.

Petitioner has noted in case cited by the California Appellate in the Opinion of his case, State v. Murray 237 Mo. 140 S. W. 899 If punishment is invoked that pays for the crime. Simular to a robber serving time for stealing, and the money not recovered, he does not have to reimburse the loss of money.

The way the California Penal Code 373a reads one could spend the rest of his life in custody for the same original crime. Please see In Re Snow 120 U. S. at page 282.

## CONCLUSION

For the foregoing reasons, and those stated in original Petition for a Writ of Certiorari, it is respectfully requested that this Court now grant a Petition for a Writ of Certiorari or that the Court now treat this case as an Appeal as it should have been filed, had petitioner known the proper procedure.

Respectfully Submitted

I Johnny B. Dapper the petitioner have made and read this petition. The foregoing is true of my own knowledge except as to those matters stated herein on my information and belief, and as to those matters I believe it to be true. I declare under penalty of perjury that the foregoing is true and correct.

July 14, 1970
San Diego, California

Johnny B. Dapper



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